

Appl. No. 09/905,804
Atty. Docket No. 8638
Amdt. dated 4/13/2005
Reply to Office Action of 12/13/04
Customer No. 27752

REMARKS

Claim Status

Claims 1-11 and 21-22 are pending in the present application. No additional claims fee is believed to be due.

Claim 21 has been amended to recite that it is the valley and not the ridge of the claimed structure that is substantially devoid of the claimed substance. Support for this amendment can be found at page 69, lines 6-8.

Claims 12-20 and 23-65 are cancelled.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Claim Rejections – 35 USC §112

Claims 21 and 22 are rejected under 35 USC §112, second paragraph, as being indefinite. To overcome the rejection as detailed at page 2 of the Office Action, Claim 21 has been amended to recite “wherein said valleys are substantially devoid of said substance.” The Applicant respectfully submits that this amendment removes any indefiniteness, and the rejection should be withdrawn.

Claim Rejections – 35 USC §102

Claims 21 and 22 are rejected under 35 USC §102(e) as being anticipated by Wada et al. (6,436,081). The Office Action states that Wada discloses the claim element “a substance for maintaining said topsheet in contact with a wearer’s body located on at least some of said ridges on said body-contacting surface of said topsheet” because Wada discloses use of a surfactant. According to the Examiner, this is because a surfactant would “increase the friction between the topsheet and the wearer’s skin.”

Wada says nothing about increasing friction of the topsheet by any means, and there is no indication that a surfactant would do so. A surfactant would likely have the

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opposite effect, as a surfactant tends to increase lubricity when in contact with body tissues. In any event, whatever effect the surfactant of Wada would have on the function of maintaining the topsheet of Wada in body contact can only be conjecture. Wada makes no disclosure of any such function. Wada gives no indication of the desirability of the function, or any link that would suggest that surfactant might deliver against such a desire. The Examiner gives no reason or basis for the assertion that a surfactant would achieve the claimed limitation of "maintaining said topsheet in contact with" the wearer's body. Wada is simply silent on the matter.

The Examiner's unsupported assertion that the surfactant of Wada would "increase the friction between the topsheet and the wearer's skin" falls short of the requirement for finding anticipation. Anticipation requires identity of all elements in a single prior art reference. Additionally, the Federal Circuit has stated that the claim elements must be described with sufficient precision and detail to establish that the subject matter existed in the prior art. (See, *Verve, LLC v. Crane Cams.*, 311 F.3d 1116, 1120, 65 USPQ2d 1051 (Fed. Cir. 2002)).

Accordingly, because every element of Claim 21 (and dependent Claim 22) is not found identically in Wada, the Applicant respectfully requests that the rejection be withdrawn.

Claim 23 is rejected under 35 USC §102(b) as being anticipated by Johnson et al. (4,595,392). Claim 23 has been cancelled. Therefore, the rejection of Claim 23 is moot.

35 USC §101 Double Patenting

Claim 20 is rejected under 35 USC §101 as claiming the same invention as that of claim 11 of US 6,635,799. Claim 20 is cancelled. Therefore the double patenting rejection is moot.

Judicially Created Double Patenting

Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting. The Applicant agrees to supply a terminal disclaimer upon notice of allowable subject matter.

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Claim 11

The Applicant notes that Claim 11 did not receive a rejection. It is respectfully submitted that because Claim 1 is allowable upon submission of a terminal disclaimer, Claim 11 would likewise be allowable.


Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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By


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